

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 ALBERT R. GARCIA,)
11 Plaintiff,)
12 vs.) ORDER
13 AL PERALTA, *et al.*,)
14 Defendants.)
/

16 Plaintiff Garcia has sent a letter to the court asking for
17 reconsideration of the entry of judgment against him. Docket #11.
18 Though Garcia requests relief under Fed. R. Civ. P. 59(e), he
19 submitted his letter well beyond the 10 day time limit for filing a
20 Rule 59(e) motion. Thus, the court will treat the letter as motion
21 for relief from judgment under Fed. R. Civ. P. 60(b). See *Rodriguez*
22 *v. Southern Pac. Trans. Co.*, 587 F.2d 980, 981 (9th Cir. 1978).

23 This court entered judgment against Garcia, a prisoner
24 proceeding *in forma pauperis*, based on a finding that his civil
25 complaint failed to state a claim for which relief may be granted.
26 Docket #9. Prior to doing so, the court had notified Garcia as to the

1 defects in his claims and granted him leave to file an amended
2 complaint. Docket #5. When Garcia claimed that he was unable to file
3 an amended complaint within the time initially allotted, the court
4 granted him a sixty day extension. Docket #8. The court dismissed
5 this case and entered judgment when Garcia failed, within the
6 additional time allotted, to either filed an amended complaint or
7 request additional time in which to do so. Docket #9/#10. In all,
8 Garcia was allowed more than three months in which to file an amended
9 complaint.

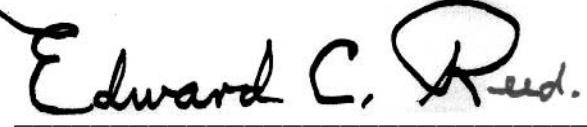
10 Garcia's request for relief from judgment is based primarily
11 on a claim that he was undergoing serious medical problems during the
12 time his case was pending. While Garcia's situation evokes sympathy,
13 he has not presented a convincing case for setting aside the court's
14 judgment. First, he has not articulated how he would amend his
15 complaint to state a claim that would survive Rule 12(b) (6) screening.
16 Instead, he states he "needs to research his issues in order to
17 properly and adequately amend his complaint." Docket #11, p. 2. The
18 court is not inclined to reopen this case in the absence of any
19 showing that Garcia will be able to present a complaint containing a
20 viable claim for relief. See *Murray v. District of Columbia*, 52 F.3d
21 353, 355 (D.C. Cir. 1995) (Rule 60(b) movant must provide court with
22 reason to believe that vacating the judgment will not be an empty
23 exercise or a futile gesture); see also, *Madsen v. Bumb*, 419 F.2d 4,
24 6 (9th Cir. 1969); 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE
25 § 2857 (1995 & Supp.2005).

1 Second, Garcia has not explained why he did not move for an
2 additional extension of time prior to entry of judgment. It appears
3 that Garcia was able to file a motion for extension of time at a time
4 when his medical problems were (based on his letter) at their most
5 severe. See Docket #7. Thus, even if his health prevented him from
6 drafting an amended complaint, he has not demonstrated good cause for
7 not requesting another extension of time prior to the court's second
8 deadline.

9 For the foregoing reasons, the court concludes that Garcia
10 is not shown that excusable neglect or any other reason justifies
11 relief from judgment in this case.

12 **IT IS THEREFORE ORDERED** that plaintiff's motion for
13 reconsideration (#11) is **DENIED**.

14 Dated this 15th day of November, 2005.

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17 UNITED STATES DISTRICT JUDGE

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